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REPORT OF THE PLANNING GROUP

Programme, procedures and working methods of the Commission, and its documentation

1. At its 2328th meeting, on 2 May 1994, the Commission noted that in paragraph 10 of resolution 48/31, the General Assembly had requested it

> "(a) To consider thoroughly:
>
> (i) The planning of its activities and programme for the term of office of its members, bearing in mind the desirability of achieving as much progress as possible in the preparation of draft articles on specific topics;
>
> (ii) Its methods of work in all their aspects, bearing in mind that the staggering of the consideration of some topics might contribute, inter alia, to a more effective consideration of its report in the Sixth Committee;
>
> (b) To continue to pay special attention to indicating in its annual report, for each topic, those specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest for the continuation of its work."

2. The Commission agreed that this request should be taken up under item 7 of its agenda entitled "Programme, procedures and working methods of the Commission, and its documentation", and that this agenda item should be considered in the Planning Group of the Enlarged Bureau.

3. The Planning Group held three meetings. It had before it the section of the topical summary of the discussion held in the Sixth Committee of the General Assembly during its forty-seventh session entitled "Programme of work of the Commission" (A/CN.4/457, paras. 432 to 443). Mr. Hans Corell, Under-Secretary General, The Legal Counsel, addressed the Planning Group at its first meeting.

Planning of the activities for the remainder of the quinquennium

4. The current programme of work consists of the following topics: State responsibility; draft Code of crimes against the peace and security of mankind; international liability for injurious consequences arising out of acts not prohibited by international law; the law and practice relating to reservations to treaties; and State succession and its impact on the nationality of natural and legal persons. 1/

5. In accordance with paragraph 10 (a) (i) of General Assembly resolution 48/31, the Planning Group considered the planning of the Commission's activities for the remainder of the term of office of its members. In doing so, it bore in mind, as requested by this resolution, the desirability of achieving as much progress as possible in the preparation of draft articles on specific topics.

6. The Planning Group agreed that, while the adoption of any rigid schedule would be impracticable, the setting up of goals in planning its activities would be useful.

7. Taking into account the progress of work achieved on the topics in the current programme as well as the state of readiness for making further progress, and bearing in mind the different degrees of complexity of the various topics, the Planning Group recommends to the Commission that it should confirm its intention to endeavour to complete by 1996 the second reading of the draft articles on the Code of crimes against the peace and security of mankind and the first reading of the draft articles on State responsibility. The Planning Group also recommends to the Commission that, as regards the topic "International liability for injurious consequences arising out of acts not prohibited by international law", it should endeavour to complete by 1996 the first reading of the draft articles on activities having a risk of causing transboundary harm. The Planning Group finally recommends that the Commission should express its intention to undertake work on the topics "The law and practice relating to reservations to treaties" and "State succession and its impact on the nationality of natural and legal persons".

1/ It is noted that, in paragraph 7 of its resolution 48/31, the Assembly had endorsed the Commission's decision to include in its agenda the last two of the above-mentioned topics, on the understanding that the final form to be given to the work on these topics shall be decided after a preliminary study is presented to the General Assembly.

8. The Planning Group has prepared for the internal use of the Commission the annexed tentative schedule of the work to be undertaken during the remaining two sessions of the quinquennium in order to achieve the above-mentioned goals, on the understanding that the schedule should be revised next year, in the light of the results achieved in its implementation.

Contribution of the International Law Commission to the Decade of International Law

9. In accordance with the decision taken by the Commission at its last session, the Working Group set up at the forty-fourth session to consider the question of the contribution of the International Law Commission to the Decade of International Law met under the chairmanship of Mr. Pellet in order to formulate proposals concerning the issuance, on the occasion of the Decade, of a publication containing studies by members of the Commission. The Working Group included, in addition to its Chairman, Mr. Al-Khasawneh, Mr. Crawford, Mr. Fomba, Mr. Mahiou, Mr. Rao, Mr. Rosenstock, Mr. Szekely, Mr. Tomuschat, and Mr. Vereshchetin.

10. The Chairman of the Working Group indicated that 31 members in addition to himself had expressed readiness to contribute to the publication, on the understanding that contributions would not exceed 15 pages and would be handed over to the Secretariat on 15 June 1995 at the latest. The provisional contents of the publication, agreed upon by the Working Group in the light of the wishes expressed by individual members, appears in Annex II to this report. 2/ In order to minimize the costs, the Working Group recommended that, at this stage, the publication be a bilingual one and include contributions in English or in French, it being understood, however, that the Secretariat will endeavour to ensure the translation into English or French of the contributions which might be submitted in one of the four other official languages of the United Nations.

11. The Planning Group recommends that the Commission approve the plan of the publication and the practical ways and means of carrying out the project, as described by the Chairman of the Working Group. It furthermore recommends that the General Assembly consider the possibility of allocating funds for the issuance of the publication in all the official languages of the United Nations and that Member States where national committees for the Decade have been established should encourage those Committees to arrange for the translation and issuance in their respective languages of the publication to ensure the widest possible dissemination of the publication among scholars and students of international law throughout the world.

... [Paragraphs on other possible initiatives relating to the Decade of International Law] [to be circulated in an addendum to the present report].

Documentation of the Commission

2/ Annex II is intended for the internal use of the Commission only.

12. The Planning Group was informed that the Chairman of the Commission had received from the Chairman of the Committee on Conferences a communication indicating that the General Assembly, in paragraph 16 of its resolution 47/202 B, had decided that there should be a comprehensive review of, inter alia, the need for and usefulness and timely issuance of verbatim and summary records and that, in paragraph 3 of resolution 48/222 B, the Assembly encouraged all bodies currently entitled to written meeting records to review the need for such records and to communicate their recommendations to the General Assembly at its forty-ninth session.

13. The Commission wishes to convey its appreciation to the General Assembly for having maintained the provision of summary records of the meetings of the Commission by its resolution 45/238 B of 21 December 1990 which is recalled in the preambular part of resolution 48/222 B.

14. The Commission has conducted a careful review in response to General Assembly resolution 48/222 B and concluded that the views which it had occasion in the past to express on the matter continue to be valid. Accordingly, it wishes to reiterate them as follows as its recommendations to the General Assembly.

15. The Commission is aware that the cost of providing records of meetings is not insignificant and it does not at all wish to minimize or discourage generalized efforts by the Organization to effect savings and reduce its financial and administrative burden. The Commission feels obliged, nevertheless, to call to the attention of the General Assembly the fact that the question of continuing to provide the Commission with summary records is not exclusively a budgetary and administrative question because it also, and primarily, involves matters of legal policy affecting the process of the promotion of the progressive development of international law and its codification undertaken by the United Nations pursuant to Article 13, paragraph 1 (a), of the Charter. There is no doubt, in the opinion of the Commission, that the discontinuance of summary records of its meetings would affect its procedures and methods of work and have a negative impact on the performance by the Commission of the tasks entrusted to it by the General Assembly. The need for summary records in the context of the Commission's procedures and methods of work is determined by, inter alia, the functions of the Commission and its composition. As its task is mainly to draw up drafts providing a basis for the elaboration by States of legal codification instruments, the debates and discussions held in the Commission on proposed formulations are of paramount importance, in terms of both substance and wording, for the understanding of the rules proposed to States by the Commission. On the other hand, pursuant to the Commission's Statute, members of the Commission serve in a personal capacity and do not represent Governments. States have therefore, it is submitted, a legitimate interest in knowing not only the conclusions of the Commission as a whole as recorded in its reports but also those of its individual members contained in the summary records of the Commission, particularly if it is borne in mind that members of the Commission are elected by the General Assembly so as to ensure representation in the Commission of the main forms of civilization and the principal legal systems of the world. Moreover, the summary

records of the Commission are also a means of making its deliberations accessible to international institutions, learned societies, universities and the public in general. They play an important role, in that respect, in promoting knowledge of and interest in the process of promoting the progressive development of international law and its codification.

16. The above-mentioned considerations lead the Commission to recommend to the General Assembly the continuing provision of summary records of the meetings of the Commission as well as the continued publication of those summary records in volume I of the Yearbook of the International Law Commission. The continuance of the present system of summary records corresponds to what has been a consistent policy of the General Assembly since the establishment of the Commission, and constitutes an essential requirement for the procedures and methods of work of the Commission and for the process of codification and progressive development of international law in general.

Conditions of adoption and discussion of commentaries

17. The Commission at its last session expressed the intention to review the conditions under which the commentaries are discussed and adopted with a view to the possible formulation of guidelines on the matter. The Planning Group could not discuss the matter in all its aspects for lack of time. It however agreed that it was desirable that commentaries to draft articles be taken up at as early a stage as possible in the course of each session to receive the required degree of attention and be in any case discussed separately rather than in the framework of the consideration of the Commission's report to the General Assembly. The Planning Group noted that steps in this direction had already been taken at the current session.

18. The Planning Group recommends that a comprehensive discussion of the question of commentaries should take place at the next session of the Commission.

Duration of the next session

19. The Plenary Group recommends that the Commission reiterate its view that the requirements of the work for the progressive development of international law and its codification and the magnitude and complexity of the subjects on its agenda make it desirable that the usual duration of the session be maintained. The Commission may also wish to emphasize that it made full use of the time and services made available to it during its current session.

Annex I

Tentative schedule of work

	Plenary	Drafting Committee
1995	Draft Code (second reading) (Last report of Mr. Thiam) State responsibility (Consequences of internationally wrongful acts characterized as crimes in art. 19) Liability (Eleventh and twelfth (last) reports of the Special Rapporteur on activities which involve risk) Reservations to treaties Succession in matters of nationality	Draft Code - second reading State responsibility Part III on dispute settlement Liability (All articles currently pending before the D.C. and as many of the articles contained in the eleventh and twelfth reports as possible)
1996	Reservations to treaties Succession in matters of nationality Action on drafts completed by the D.C.: - Draft Code (second reading) - State responsibility (first reading) - Liability (first reading)	Draft Code - completion of second reading State responsibility (Consequences of internationally wrongful acts characterized as crimes by art. 19) Completion of first reading Liability - completion of first reading of draft articles on activities having a risk causing transboundary harm

Annex II

INTERNATIONAL LAW ON THE EVE OF THE TWENTY-FIRST CENTURY

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Note

*/ The order in which contributions are to appear in the publication will be decided upon at a later stage.